

**LETTER OF FINDINGS NUMBER: 02-0574**  
**DEPARTMENT OF STATE REVENUE**  
**Motor Carrier**  
**For Tax Period 1998-2000**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**I. Motor Carrier—Overweight Vehicle Permits**

**Authority:** IC 6-8.1-5-1

Taxpayer protests the imposition of overweight vehicle permit fees.

**II. Tax Administration—Interest and Negligence Penalty**

**Authority:** IC 6-8.1-10-1; 45 IAC 15-11-2

Taxpayer protests imposition of interest and a ten percent (10%) negligence penalty.

**STATEMENT OF FACTS**

Taxpayer operates a trucking company which serves customers in the steel industry in Indiana. The Indiana Department of Revenue ("Department") determined that taxpayer had not paid for enough oversized and overweight permits to cover the number of overweight loads it had trucked for its customers. The Department assessed the fees and imposed a ten percent negligence penalty and interest. Taxpayer protests the imposition of fees, penalty and interest. Further facts will be supplied as necessary.

**I. Motor Carrier—Overweight Vehicle Permits**

**DISCUSSION**

Taxpayer protests the imposition of overweight vehicle permit fees. The Department issued proposed assessments for unpaid overweight vehicle permit fees after reviewing the best information available to it, as provided in IC 6-8.1-5-1(a). Also of relevance is IC 6-8.1-5-1-(b), which states in pertinent part:

...

The notice of proposed assessment is prima facie evidence that the department's claim for unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.

In the course of its protest, taxpayer has provided sufficient documentation to prove that it is not liable for the unpaid permit fees. Therefore, taxpayer has met its burden under IC 6-8.1-5-1(b).

### **FINDING**

Taxpayer's protest is sustained.

## **II. Tax Administration—Interest and Negligence Penalty**

### **DISCUSSION**

Taxpayer protests the imposition of interest and a ten percent (10%) negligence penalty. The Department refers to IC 6-8.1-10-1(e), which states, "Except as provided by IC 6-8.1-5-2(e)(2), the department may not waive the interest imposed under this section." Therefore, the Department may not waive interest.

Taxpayer also protests the imposition of a ten percent negligence penalty. The relevant statute is IC 6-8.1-10-1(a), which states:

If a person:

- (1) fails to file a return for any of the listed taxes;
  - (2) fails to pay the full amount of tax shown on the person's tax return on or before the due date for the return payment;
  - (3) *incurs, upon examination by the department, a deficiency that is due to negligence;*
  - (4) fails to timely remit any tax held in trust for the state; or
  - (5) is required to make a payment by electronic funds transfer (as defined in IC 4-8.1-2-7), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department;
- the person is subject to a penalty.  
(Emphasis added)

Negligence is described in 45 IAC 15-11-2(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and

follow instructions provided by the department is treated as negligence.  
Negligence shall be determined on a case by case basis according to the facts  
and circumstances of each taxpayer.

Since taxpayer was sustained in Issue I of this protest, it has not failed to use such reasonable care as would be expected of an ordinary taxpayer. Therefore, taxpayer was not negligent under 45 IAC 15-11-2(b).

**FINDING**

Taxpayer's protest is sustained.

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